



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 20, 2016, which denied the appellant’s request for the Monthly Nutritional Supplement (MNS) on the basis that the appellant was not eligible under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) subsection Schedule 67(1.1) (b), (c) and (d) as well as Section 7 of Schedule C.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation sections 67(1)
Employment and Assistance for Persons with Disabilities Regulation Schedule C section 7

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Notice of Appeal dated October 23, 2016
- Request for Reconsideration dated September 21, 2016
- Monthly Nutritional Supplement Decision Summary-not dated.
- Application for Monthly Nutritional Supplement dated July 20, 2016

In the appellant's Notice of Appeal, he wrote:

- He was denied on unfair grounds;
- He has been terminally ill all his life;
- Since the age of nineteen he has under care for many reasons not specified by the doctor;
- He would like to orally explain himself.

At the hearing, the appellant stated:

- He can only afford to eat rice and tuna fish.
- He has many mental and physical conditions that were not covered in the application as the doctor does not know him well.
- The doctor told him to have blood tests completed but he cannot afford these.
- He was on his death bed and needs to eat.
- Requested the ministry looks at his file to understand his needs.

In the reconsideration decision, the ministry wrote:

- Key Dates
 - a) July 21, 2016: Application for MNS received.
 - b) September 16, 2016: Request for MNS denied.
 - c) October 11, 2016: Request for reconsideration submitted. No new documents were submitted.
 - d) October 20, 2016: Ministry reviewed appellant's reconsideration request. The Reconsideration Officer (RO) phoned the appellant and asked if he planned to submit more information or documents for his reconsideration. The appellant did not state he would be submitting additional information or documents. The appellant's request was denied.
- The appellant is currently in receipt of a diabetic diet allowance in the amount of \$35 per month and is a Person with Disabilities in receipt of disability assistance.
- **Chronic Progressive Deterioration of Health**
 - a) In the MNS application, when asked if the appellant was being treated for a chronic, progressive deterioration of health as a direct result of severe medical conditions noted, the medical practitioner (MP) wrote "Uncontrolled diabetes mellitus type 2 with secondary hyperalbuminuria. In the review, the ministry determined that the appellant's request met the eligibility criterion set out in the EAPWD Regulation, subsection 67(1.1)
- **Symptoms**
 - a) In the appellant's initial application, the MP indicated the appellant displayed symptoms of malnutrition ("Malnutrition contributing to diabetes, inadequate financial capability to

purchase proper nutrition”) and significant deterioration of a vital organ (“increasing hyperalbuminuria which can cause chronic kidney disease”).

- **Vitamin/Mineral Supplementation**

a) The minister was not satisfied the appellant requires vitamin/mineral supplementation to alleviate a symptom set out in subsection 67(1.1) (b) and prevent imminent danger to life as the MP did not provide any information to indicate that the appellant required vitamin/mineral supplementation.

- **Nutritional Items**

a) In specifying the nutritional items required, the MP wrote;

- “High protein, low carbohydrate diet. Duration one year”.
- “No” when asked if the appellant had a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
- In describing how nutritional items required will alleviate one or more symptoms specified and provide caloric supplementation to the regular diet “improved blood sugar control, decrease hyperalbuminuria”.
- In describing how nutritional items required will prevent imminent danger to life, “prevention of diabetic complications such as hyperosmolar state”.
- The height/weight recorded for the appellant indicates his BMI is 37.7, which is in the obesity range.

At the hearing, the ministry stated:

- A summary of the findings from the reconsideration decision.
- They were sympathetic to the appellant’s request and that their decision was based on the evidence supplied.
- When asked by the appellant if he would be able to re-apply for MNS with evidence supplied by another MP; the ministry encouraged this action is taken.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of October 20, 2016 which denied the appellant's request for the Monthly Nutritional Supplement was reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of the appellant. Specifically, the minister was not satisfied that the appellant's request meets the requirements of Section 67(1.1) (b), (c) and (d) of the EAPWDR and Schedule C Section 7 of the EAPWDR as eligibility criteria was not met.

The relevant legislation is as follows:

Nutritional supplement

67 (1) The minister may provide a nutritional supplement in accordance with section 7 [*monthly nutritional supplement*] of Schedule C to or for a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who

(a) is a person with disabilities, and

(b) is not described in section 8 (1) [*people receiving special care*] of Schedule A, unless the person is in an alcohol or drug treatment centre as described in section 8 (2) of Schedule A,

if the minister is satisfied that

(c) based on the information contained in the form required under subsection (1.1), the requirements set out in subsection (1.1) (a) to (d) are met in respect of the person with disabilities,

(d) the person is not receiving another nutrition-related supplement,

(e) Repealed. [B.C. Reg. 145/2015, Sch. 2, s. 7 (c).]

(f) the person complies with any requirement of the minister under subsection (2), and

(g) the person's family unit does not have any resources available to pay the cost of or to obtain the items for which the supplement may be provided.

(1.1) In order for a person with disabilities to receive a nutritional supplement under this section, the minister must receive a request, in the form specified by the

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minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed all of the following:

- (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;
- (b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:
 - (i) malnutrition;
 - (ii) underweight status;
 - (iii) significant weight loss;
 - (iv) significant muscle mass loss;
 - (v) significant neurological degeneration;
 - (vi) significant deterioration of a vital organ;
 - (vii) moderate to severe immune suppression;
- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;
- (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

(2) In order to determine or confirm the need or continuing need of a person for whom a supplement is provided under subsection (1), the minister may at any time require that the person obtain an opinion from a medical practitioner or nurse practitioner other than the practitioner referred to in subsection (1) (c).

Schedule C

Monthly nutritional supplement

7 The amount of a nutritional supplement that may be provided under section 67 [*nutritional supplement*] of this regulation is the sum of the amounts for those of the following items specified as required in the request under section 67 (1) (c):

- (a) for additional nutritional items that are part of a caloric

supplementation to a regular dietary intake, up to \$165 each month;

(b) Repealed. [B.C. Reg. 68/2010, s. 3 (b).]

(c) for vitamins and minerals, up to \$40 each month.

The appellant's position

The appellant's position is that because the doctor completing his application form for the Monthly Nutritional Supplement was not aware of all the details of his condition he should not be denied this request. He feels the current support is not adequate and that he cannot survive on his current diet.

The ministry's position

The ministry's position is that the information provided in the MNS application and the Request for Reconsideration does not establish that a medical practitioner has confirmed the appellant's need for additional nutritional items that are part of a caloric supplementation to a regular dietary intake for the purpose of alleviating a symptom referred to in Section 67 (1.1) (b); and that failure to obtain the items requested would result in imminent danger to his life. The ministry found that the eligibility criteria set out in the EAPWD Regulation, subsections 67(1.1) (b), (c) and (d) were not met therefore the MNS request was denied.

A monthly nutritional supplement is provided for Persons with Disabilities (PWD) designation who is in receipt of disability assistance and who has a severe medical condition causing a chronic, progressive deterioration of health with symptoms of wasting. The supplement is intended to prevent imminent danger to the person's life by providing essential, specific items to supplement regular nutritional needs.

The ministry did not accept malnutrition as a symptom as it was linked to finances rather than a chronic, progressive deterioration of health. Therefore the appellant did not meet the criteria of displaying at least two of the symptoms set out in the EAPWD Regulation, subsection 67(1.1) (b).

In the ministry's summary, nutritional items can be provided to alleviate one or more symptoms specified but the appellant did not satisfy the required criteria set out in section 67(1.1)(b).

Nutritional supplements can be provided in cases where the applicant is consuming a regular diet, and that in spite of this is experiencing weight loss, wasting or a nutrient deficiency. The MP requests a high protein, low carbohydrate diet. This is a particular diet; however, there is no evidence this is necessary in addition to regular caloric intake. The applicable legislation allows for supplementation if it is necessary as a supplement to a regular diet. A particular type of diet is accommodated with the monthly diet supplement of which the appellant is currently in receipt. It was not confirmed that caloric supplementation in addition to regular dietary intake will be required on an ongoing basis. As a result, the appellant was not approved for nutritional supplementation.

• **The ministry noted the following:**

- a) High protein and low carbohydrate diets do not meet the intent of the MNS
- b) The MP's statement the appellant requires nutritional supplements for "Duration one year" suggests the appellant does not require supplements to alleviate a symptom resulting from a chronic progressive deterioration of health.
- c) The MP does not provide enough evidence to demonstrate the appellant is displaying a symptom set out in the EAPWD Regulation, subsection 67(1.1)(b) which would indicate a need for caloric supplementation, such as malnutrition, underweight status, significant weight loss, or significant muscle mass loss, and the appellant's weight is in obesity range.
- d) The MP does not confirm the appellant has a medical condition that results in the inability to absorb sufficient calories to satisfy daily requirements through a regular dietary intake.
- e) Based on the information provided, a need for caloric supplementation to a regular dietary intake has not been established. Therefore, the ministry is not satisfied the information provided constitutes confirmation that failure to provide additional nutritional items will result in an imminent danger to the appellant's life.

Panel Decision

In order for a person with disabilities to receive a nutritional supplement under section 67 of the EAPWD Regulations, the minister must receive a request, in the form specified by the minister, completed by a medical practitioner or nurse practitioner, in which the practitioner has confirmed:

- (a) the person with disabilities to whom the request relates is being treated by the practitioner for a chronic, progressive deterioration of health on account of a severe medical condition;

The evidence supplied was accepted by the ministry and the criteria for Section 67(1.1) (a) was met.

- (b) as a direct result of the chronic, progressive deterioration of health, the person displays two or more of the following symptoms:
 - (i) malnutrition;
 - (ii) underweight status;
 - (iii) significant weight loss;
 - (iv) significant muscle mass loss;
 - (v) significant neurological degeneration;
 - (vi) significant deterioration of a vital organ;
 - (vii) moderate to severe immune suppression;

The evidence supplied by the MP did not meet the criteria of two or more symptoms. Criteria (vi) significant deterioration of a vital organ, was supported by the evidence but criteria (i) Malnutrition was not as the MP referred this symptom as caused by lack of finances and not as a

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result of result of chronic , progressive deterioration of health on account of a severe medical condition . The panel found that the ministry's decision that the appellant did not meet the criteria of subsection 67(1.1) (b) of the EAPWD Regulation was reasonable.

- (c) for the purpose of alleviating a symptom referred to in paragraph (b), the person requires one or more of the items set out in section 7 of Schedule C and specified in the request;

The evidence supplied by the MP specified nutritional items required referred to a high protein and low carbohydrate diet which does not meet the legislative requirements of the MNS of a need for caloric supplementation to a regular dietary intake. A particular type of diet is accommodated with the monthly diet supplement, of which the appellant is currently in receipt. The panel found that the ministry's decision that the appellant did not meet the criteria of subsection 67(1.1) (c) of the EAPWD Regulation was reasonable.

- (d) failure to obtain the items referred to in paragraph (c) will result in imminent danger to the person's life.

The evidence supplied by the MP did not establish that additional nutritional items would alleviate a symptom referenced in terms of subsection 67(1.1) (b) and that failure to obtain the nutritional items would result in imminent danger to the appellant's life. The panel finds that the ministry's decision that failure to provide additional nutritional items will not result in an imminent danger to the appellant's life was reasonable.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for the Monthly Nutritional Supplement was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.